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May 2, 2014

VIA ECF

Hon. Vernon S. Broderick, U.S.D.J.
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

Re: *TreeHouse Foods, Inc., et al. v. Green Mountain Coffee Roasters, Inc., et al.*, 1:14-cv-905-VSB

Dear Judge Broderick:

We write on Plaintiff's behalf with respect to a statement made by counsel for Defendant Keurig Green Mountain, Inc. ("KGM") during the conference yesterday before your Honor. *See* ECF No. 36; Transcript of May 1, 2014 Conference (excerpt attached).

In an exchange relating to the impending launch of the Keurig 2.0 brewer and whether a preliminary injunction against its "lock-out" feature would be warranted, Mr. Badini pointed out that one of the reasons this would be anticompetitive was that Keurig has "announced publicly they're pulling the old brewers off the market so our customers will not have a choice." Tr. 20:20 - 21:8. In response, KGM's counsel, Mr. Cary, stated: "Your Honor, the fact that the new machines are going to be produced – first of all, there is no decision as to what happens to the old models. There is no decision that they will be pulled off the market." Tr. 21:9-12. That statement by KGM's counsel is not consistent with KGM's own public statements made as recently as the day before the conference. KGM publicly stated the following just two days ago:

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Keurig We will be transitioning the lineup of Keurig brewers we offer for sale starting in late 2014 and through 2015. Ultimately, within about a year of its launch, our new Keurig 2.0 system will replace most of the current lineup of both K-Cup and Vue brewers available for sale at retailers. The Vue packs we offer represent the beverages and flavors that have been most popular with Keurig K-Cup consumers and will remain available at Bed Bath and Beyond and on Keurig.com for years to come.

Yesterday at 7:24am



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Keurig, Inc., Facebook Post on Apr. 30, 2014 at 7:24 AM Eastern Standard Time, The Official Facebook Page of Keurig, Inc., <https://www.facebook.com/keurig/wall?filter=2> (accessed on May 1, 2014).

KGM has repeatedly made similar public statements about its intention to eliminate its old brewers. For instance, Brian Kelley, KGM's President, Chief Executive Officer and Director, stated in November that "within about a year of its launch, *Keurig 2.0 will replace our current lineup* of both K-Cup and Vue brewers." Green Mountain Coffee Roasters, Inc., Quarter 4 2013 Earnings Call Transcript (Nov. 20, 2013), at 4 (emphasis added). Mr. Kelley reiterated in February of this year that:

This [the Keurig 2.0] is the Keurig system. This will be the Keurig system. And so it's replacing the current Keurig system that's out there. And so this is the Keurig system that all retailers who carry Keurig today will carry going forward."

Green Mountain Coffee Roasters, Inc., Quarter 1 2014 Earnings Call Transcript (Feb. 5, 2014), at 6, 11 (emphasis added).

If the statement made by KGM's counsel during the conference was accurate, then KGM has been misleading consumers and retailers about the impending "replacing" of current Keurig brewers with Keurig 2.0, further contributing to the coercion compelling retailers to stop purchasing Competitive Cups that will not be compatible with Keurig 2.0.

Respectfully submitted,

By: /s/ Dan K. Webb

Dan K. Webb

Aldo A. Badini

cc: All Counsel of record (by email)